

REMARKS

In response to the Office Action mailed on October 30, 2008, Application responds as follows. Claim 38 has been canceled and claim 39 has been amended to better claim the subject matter of the present invention.

Applicant is gathering better copies of documents cited in the Information Disclosure Statement that the Office Action notes are not legible. Applicant will file these documents in a subsequent information disclosure statement. Applicant appreciates that the Office Action finds the previously filed amendments acceptable to overcome the section 112 objections.

With respect to the claim rejections, in paragraph 4 of the Office Action there is a statement of rejection based on 35 USC Section 103(a) followed immediately in the paragraph by a restatement of the Section 102(e) rejection made in the previous Office Action. The remainder of the paragraph uses the language associated with "obviousness" type rejections such that Applicant believes that the Section 102(e) rejection was inserted into the Office Action in error. However, Applicant avers that the claims are not anticipated nor made obvious by McGivern (US Patent No. 6,952,881) as noted in Applicant's prior response, in light of the amendments to the claims and in view of the discussion following.

Prior to a further discussion of the Office Action, Applicant notes that the instrument disclosed in its application, as now clearly claimed, is intended for use to capture an image and positioning data. In particular, the Applicant's instrument captures an image of a target and also captures data allowing the position of that target to be determined. The instrument includes a camera for capturing the image. The position of the target is determined using data gathered from a plurality of spatial sensors. The spatial sensors include:

- a positioning system for determining a position of the instrument;
- a laser distance meter for determining a distance from the instrument to the target;
and
- a magnetic compass for determining a bearing of the instrument.

The instrument also includes a display which superimposes a marker indicative of a datum point on the camera image. A user can point the instrument at a target, using the marker.

Crucially, the camera, laser distance meter and compass are all aligned. This means that, when a user aligns the marker and datum point with a target, the laser distance meter is pointed at the target and the compass provides a bearing from the instrument to the target. As the position of the instrument is known, the absolute position of the target can be determined from the gathered data by a geometric calculation. Thus, the Applicant's device allows remote determination of the position of a target.

As presently claimed, Claim 39, and therefore all claims dependent thereon, requires the instrument to include at least two power switches – one for controlling power to the compass and another for controlling one or more other devices within the instrument. This is most clearly shown in, for example, Figures 9 to 11 of the specification as well as discussed therein. Power to the switches is controlled asynchronously, thereby asynchronously controlling power supply to the compass, and one or more other devices. Disclosure of asynchronous control of the various switches is found in, for example, page 15, lines 23 to 27 of the priority PCT specification. As noted in Applicant's previous response, other devices produce magnetic fields which interfere with operation of the compass. Asynchronous control of the compass, as claimed, therefore contributes to improved measurement accuracy. McGivern shows no appreciation for this technology, which is an important element in the present invention

Further, in the present invention, the information obtained when a measurement is made is stored in memory. In particular, an image from the camera is stored, and data from the spatial sensors is also stored and associated with the stored image. Any other desired information can also be stored and associated with the image, such as for example a user-input description of the target, data from a microphone, etc. Claim 39 has been amended to clarify the nature of the Applicant's instrument and the distinctions between the Applicant's device and the prior documents cited by the examiner.

The Office Action has rejected claims 38-40, 43, 45, 79, 80 and 83-86 under 35 USC Section 103(a) as being unpatentable over McGivern, as noted above, in view of Beason et al (U.S. Patent No. 6,529,827)(hereinafter Beason).

McGivern discloses a sight for a hunting bow. The sight includes a power source and an LCD display. A beam splitter is used to provide a "heads-up" display, reflecting light from the LCD display to overlay the target. The sight may also include a level sensor (see column 3 line 44 to column 4 line 19; also column 8 lines 3 to 8). In contrast to the Applicant's device, McGivern is not concerned with determination of target position. McGivern is simply concerned with assisting a user to successfully shoot an animal. In McGivern, there is no determination of the position of the hunter or the bow. There is no determination of a bearing of the hunter or the bow. It is therefore not possible, using the McGivern device, to determine the absolute position of the target. There is no motivation for determining the position of the target, because this is not necessary for assisting a user successfully to shoot an animal.

To assist a user successfully to shoot an animal, McGivern provides a heads up display, and a primitive graticule arrangement (i.e. lines on the display) for providing an estimate of target distance (not position) based on the apparent size of the animal (Figure 4; column 6 lines 7 to 28). When the animal is further away, it appears smaller. This apparent size can be roughly estimated by the user using the graticule lines displayed to a user, allowing the user to estimate the target distance.

This is a primitive arrangement which does not provide for automated and accurate determination of a distance to a target, or for the storing of such distance data.

McGivern does not disclose an instrument including a plurality of spatial sensors. In particular, McGivern does not disclose:

- A compass
- A laser distance meter
- An instrument for capture of data including an image of a target and data for determination of a position of a target
- An instrument including aligned camera, laser distance meter and compass
- An instrument with a display on which a marker indicative of a datum point is superimposed on a camera image
- An instrument providing for asynchronous power control of a compass and one or more other devices
- An instrument configured to store an image and data from a plurality of spatial sensors and to associate the spatial data with the image.

The Office Action suggests that it would have been obvious to include the teaching of Beason in the McGivern device. However, Applicant finds no motivation for a person having ordinary skill in the art to include further sensors, which is what Beason adds, to

McGivern to achieve the goal of assisting a user successfully to shoot an animal. The direction and position of the device is wholly immaterial to this goal and the resulting device would not provide the device of the present invention

Even if Beason and McGivern were to be combined, the combination would not render the invention of amended claim 39 obvious. Beason discloses a navigation device including a GPS receiver, pressure sensor, magnetic sensor and tilt sensor. What is disclosed, then, is a navigation device; not a device intended for the capture of data concerning a remote target. The device is simply arranged to display to a user data from navigation devices. There is no disclosure of:

- A camera for capture of an image of a target
- A laser distance meter for determining a distance from the instrument to the target
- A display for displaying a camera view and a marker indicative of a datum point
- Aligned camera, compass and laser distance meter
- Asynchronous power control
- An instrument configured to store an image and data from a plurality of spatial sensors and to associate the spatial data with the image.

The combination of Beason and McGivern therefore fails to disclose the following features required by claim 39:

- An instrument for capture of data including an image of a target and data for determination of a position of a target
- An instrument including a laser distance meter
- An instrument including aligned camera, laser distance meter and compass
- An instrument with a display on which a marker indicative of a datum point is superimposed on a camera image

- An instrument providing for asynchronous power control of a compass and one or more other devices
- An instrument configured to store an image and data from a plurality of spatial sensors and to associate the spatial data with the image.

As such, Applicant avers that the device of the present invention, as now claimed is not made obvious in the combination of McGivern and Beason; nor is the device anticipated by either one of these references. With respect to the dependent claims, this combination, as it does not teach claim 39, cannot teach the dependent claims wherein more limitations, not shown in the references, are added.

The Office Action has rejected claim 82 under 35 USC Section 103(a) as being unpatentable over McGivern and Beason (above) in view of Kashani (U.S. Patent Pub No. US 2002/0032875). As noted above, the present invention as claimed is not taught by McGivern, Beason or the combination of McGivern and Beason. Kashani relates to control of peripheral devices for increased battery life and to remove the need for external power supplies for those peripheral devices. The teachings of Kashani, relied upon by the Office Action, do not provide those elements which would cause the combination of McGivern and Beason and Kashani to make the teachings of claim 82 obvious.

Specifically and as previously noted, Kashani relates to control of peripheral devices for increased battery life and to remove the need for external power supplies for those peripheral devices. The Office Action relies on Kashani mainly in objecting that the handshaking lines of claim 82 are obvious. Whether or not such is true does not overcome the deficiencies pointed out

with respect to the McGivern and Beason disclosures. As such, the addition of the teaching of Kashani to the McGivern and Beason disclosures does not make claim 82 obvious.

Applicant respectfully submits that neither McGivern, Beason or McGivern and Beason in combination, with Kashani teach the invention of the present invention nor does the combination make the invention obvious.

Applicant encloses a Request for Continued Examination (RCE) as well as authorization for the Commissioner to charge the fees for the RCE to Deposit Account number 23-0920. It is believed that no other fees or petitions are necessary in this reply and as a result of the amendments. However, should any fee be needed, please charge the above noted Deposit Account for any such fee, Deposit Account No. 23-0920, and deem this paper to be the required petition.

Applicant hereby respectfully requests the withdrawal of the rejections of the Office Action and continued prosecution, reconsideration and reexamination. A sincere effort has been made to overcome the Office Action's rejections and to place the application in allowable condition. Applicant invites the Examiner to call applicant's attorney to discuss any aspects of the invention that the Examiner may feel are not clear or which may require further discussion.

In view of the above arguments, Applicant suggests that the Application is in order for allowance, and requests that a notice of allowance issue.

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Applicant: Prentice et al.
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Respectfully submitted,
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A handwritten signature in black ink, appearing to read "Daniel M. Gurfinkel", with a stylized flourish at the end.

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